

STATE OF MONTANA  
BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

IN THE MATTER OF APPLICATION FOR  
BENEFICIAL WATER USE PERMIT NO.  
4063-s76M BY WILLIAM J. AND AUDREY  
KONIE

**FILMED**

APR 2 1990 FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on November 9, 1976, by the Hearings Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

FINAL ORDER

1. Subject to the conditions cited below, the Applicants' Provisional Permit No. 4063-s76M is hereby granted allowing the appropriation of 25 gallons of water per minute not to exceed 4 acre-feet of water per annum from the West Fork of Six Mile Creek (Isaac Creek) in Missoula County, Montana, to be diverted from said creek at a point in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 2, Township 15 North, Range 22 West, M.P.M., and to be transported by means of an existing ditch to two points, in Tract 10A and 10B, Six Mile Estates, located in the N $\frac{1}{2}$  of Section 10, Township 15 North, Range 22 West, M.P.M., and used for domestic purposes (including one acre of garden) from January 1 to December 31, inclusive, of each year, and for irrigation (pasture) on a total of three acres, more or less, in said Section 10, from April 15 to October 15, inclusive, of each year.

2. The Provisional Permit is granted subject to all prior water rights in the source of supply including but not limited to those persons claiming existing water rights and objecting to this application.

3. The issuing of a Provisional Permit by the Department in no way reduces the Applicants' liability for damage caused by the Applicants' exercise of their Provisional Permit, nor does the Department in issuing a Provisional Permit in any way acknowledge liability for damage caused by the Applicants' exercise of their Provisional Permit.

4. This Provisional Permit is granted subject to any final determination of prior existing water rights in the source of supply as provided for by Montana law.

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5. The validity of this Provisional Permit is dependent upon the Applicants' ability to obtain, exercising due diligence, an easement for the delivery of the water to the proposed place of use.

Recommendation

The Department recommends that all parties in this matter properly install and maintain adequate measuring devices to fit their particular individual situation where practical and keep a log of records of water used for proof of their water rights.

Done this 11<sup>th</sup> day of January, 1976.

*Derrin Ferris*  
Administrator, Water Resources Division  
DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

NOTICE: Section 89-8-100, R.C.M. 1947, provides that a person who is aggrieved by a final decision of the Department is entitled to a hearing before the Board of Natural Resources and Conservation. A person desiring a hearing before the Board pursuant to this section must notify the Department in writing within ten (10) days of the final decision.

Address: Department of Natural Resources and Conservation  
Natural Resources Building  
32 South Ewing  
Helena, MT 59601

CASE # 4043

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

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IN THE MATTER OF THE APPLICATION )  
FOR BENEFICIAL WATER USE PERMIT ) PROPOSAL FOR DECISION  
NO. 4063-s76M BY WILLIAM J. AND )  
AUDREY E. KONIE )  
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Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing on objections to the above-described application was held in the Missoula City Council Chambers, Missoula, Montana on Tuesday, September 21, 1976 at approximately 9:30 a.m., Daniel G. Diemert, Hearing Examiner, presiding.

Mr. and Mrs. Konie appeared at the hearing and presented testimony in support of their application.

Objections were received by the Department from Thomas and Lydia Bladholm, through their attorney, Ronald McDonald, Juanita M. Hirschi and Sons, Little Beaver Creek Ranches, and Ida V. Slemons. All of the objectors except Little Beaver Creek Ranches were present at the hearing. In addition to those submitting written objections, Joseph C. Topel, Maxine L. Topel, Kenneth J. Miller and John L. Slupski attended the hearing and presented testimony opposing the application.

Mr. James Rehbein attended the hearing on behalf of the Department of Natural Resources and Conservation. As required by law, the Hearing Examiner hereby makes the following Proposed Findings of Fact, Proposed Conclusions of Law, and

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Proposed Order to the Administrator, Water Resources Division,  
Department of Natural Resources and Conservation:

PROPOSED FINDINGS OF FACT

1. Under the provisions of Section 89-880, R.C.M. 1947, a permit is required to appropriate water from the West Fork of Six Mile Creek (Isaac Creek), in Missoula County, Montana.

2. On October 30, 1974, the Department received an Application for Beneficial Water Use Permit No. 4063-s76M from William J. and Audrey E. Konie who sought to appropriate 25 gallons of water per minute not to exceed 4 acre-feet per annum from the West Fork of Six Mile Creek (Isaac Creek), in Missoula County, Montana to be diverted from said creek at a point in the NW1/4 NE1/4 of Section 2, Township 15 North, Range 22 West, M.P.M., and to be transported by means of an existing ditch to two points, in Tract 10A and 10B, Six Mile Estates, located in the N1/2 of Section 10, Township 15 North, Range 22 West, M.P.M. and used for domestic purposes (including one acre of garden) from January 1 to December 31, inclusive, of each year, and for irrigation (pasture) on a total of three acres, more or less, in said Section 10 from April 15 to October 15, inclusive, of each year.

3. The Department received objections from Thomas and Lydia Bladholm, through their attorney, Ronald McDonald, Juanita M. Hirschi and Sons, Little Beaver Creek Ranches, and Ida V. Slemons.

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4. Based upon the fact that Objector Bladholm, by his own admission, has placed new acres under irrigation since the effective date of the Montana Water Use Act of 1973 and has done so without application to the Department and the fact that Mrs. Hirschi testified that prior to Mr. Bladholm's increased use the water users in the area never had a shortage, there are unappropriated waters in the source of supply.

5. If the Provisional Permit, herein applied for, is conditioned subject to existing water rights in the source of supply, the rights of prior appropriators will not be adversely affected.

6. It appears that the proposed means of diversion or construction are adequate.

7. The proposed use of water for irrigation of a pasture and a garden is a beneficial use.

8. The proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

9. The Applicant has not asked for an appropriation of fifteen cubic feet of water per second or more. It therefore is not necessary to prove by clear and convincing evidence that the rights of the prior appropriator will not be adversely affected.

10. The water applied for is to be delivered to the proposed place of use by means of an existing ditch. The

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Applicant has not obtained an easement for the use of said ditch.

PROPOSED CONCLUSIONS OF LAW

1. The Application for Beneficial Water Use Permit No. 4063-s76M should be granted in accordance with the provisions of Chapter 8, Title 89 of the Revised Codes of Montana.

2. Pursuant to 89-886(1), R.C.M. 1947, valid rights of prior appropriators must be protected in the issuance of a beneficial water use permit.

3. The rights of prior appropriators will be protected if the permit is conditioned so as to protect those rights.

4. The issuing of a Provisional Permit in no way reduces the Applicants' liability for damage caused by the appropriation, nor does the Department, in issuing a Provisional Permit in any way acknowledge liability for damage caused by the Applicants' exercise of their Provisional Permit.

5. Nothing decided herein has bearing on the status of water rights claimed by the Applicants other than those herein applied for nor does anything decided herein have bearing on the status of claimed rights of any other party except in relation to those rights herein applied for, to the extent necessary to reach a conclusion herein.

6. The aquisition of an easement to use the existing ditch to transport the water herein applied for is not a prerequisite to this Department's issuance of a Provisional Permit. The aquisition of an easement, however acquired, will be necessary

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for the vesting of a valid water right.

Based upon the above Proposed Findings of Fact and Proposed Conclusions of Law, the following Proposed Order is hereby made:

PROPOSED ORDER

1. Subject to the conditions cited below, the Applicants' Provisional Permit no. 4063-s76M is hereby granted allowing the appropriation of 25 gallons of water per minute not to exceed 4 acre-feet of water per annum from the West Fork of Six Mile Creek (Isaac Creek) in Missoula County, Montana, to be diverted from said creek at a point in the NW1/4 NE1/4 of Section 2, Township 15 North, Range 22 West, M.P.M., and to be transported by means of an existing ditch to two points, in Tract 10A and 10B, Six Mile Estates, located in the N1/2 of Section 10, Township 15 North, Range 22 West, M.P.M. and used for domestic purposes (including one acre of garden) from January 1 to December 31, inclusive, of each year, and for irrigation (pasture) on a total of three acres, more or less, in said Section 10, from April 15 to October 15, inclusive, of each year.

2. The Provisional Permit is granted subject to all prior water rights in the source of supply including but not limited to those persons claiming existing water rights and objecting to this application.

3. The issuing of a Provisional Permit by the Department in no way reduces the Applicants' liability for damage caused

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by the Applicants' exercise of their Provisional Permit, nor does the Department in issuing a Provisional Permit in any way acknowledge liability for damage caused by the Applicants' exercise of their Provisional Permit.

4. This Provisional Permit is granted subject to any final determination of prior existing water rights in the source of supply as provided for by Montana law.

5. The validity of this Provisional Permit is dependent upon the Applicants' ability to obtain, exercising due diligence, an easement for the delivery of the water to the proposed place of use.

NOTICE

This is a Proposed Order and will not become final until accepted by the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation. Written exceptions to the Proposed Order, if any, shall be mailed to the Department within ten (10) days of service upon the parties herein. Upon receipt of any written exceptions, opportunity will be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

DATED this 9<sup>th</sup> day of November, 1976.

  
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DANIEL G. DIEMERT  
HEARING EXAMINER

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